

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

THE MEN'S WEARHOUSE, INC., a Texas
corporation,

Plaintiff,

v.

DJ'S KOOLER SERVICE *et al.*,

Defendants.

No. C 12-05318 LB

ORDER CONTINUING MOTION
HEARING, ORDERING SERVICE, AND
GRANTING STIPULATION TO
EXTEND TIME

Plaintiff filed this lawsuit on October 16, 2012. *See* ECF No. 1.¹ Defendants First Business Capital Corporation ("FBCC"), and Specialized Transportation Agent Group, Inc. ("Specialized Transportation"), appeared in the case. FBCC filed a Motion to Transfer Case to the Western District of Wisconsin or, in the Alternative, to Dismiss for Improper Venue on November 9, 2012, that is set for a hearing on December 20, 2012. *See* ECF No. 8. The Men's Wearhouse, Inc. and FBCC have consented to this court's jurisdiction. *See* ECF Nos. 6 and 10. Specialized Transportation has not yet consented or declined. Defendants DJ's Cooler Service, Frate, Inc., and The Suddath Companies, have not appeared, and the docket does not reflect that they have been served. The 120-day period to serve the Defendants expires on February 13, 2013. *See* Fed. R. Civ. P. 4(m).

¹ Citations are to the Electronic Case File ("ECF") with pin cites to the electronically-generated page number at the top of the document.

1 Under the circumstances, the court vacates the December 20, 2012 hearing and re-sets it to
2 March 7, 2013 at 11:00 a.m. Plaintiff is directed to serve Defendants DJ's Kooler Service, Frate,
3 Inc., and The Suddath Companies by February 13, 2013 and to file proof of service by February 20,
4 2013 or risk dismissal of the unserved Defendants under Federal Rule of Civil Procedure 4(m).

5 In addition, on November 28, 2012, Defendant Specialized Transportation filed a stipulation to
6 extend the time for it to respond to FBCC's motion. *See* ECF No. 14. Normally, the court would not
7 permit a party to file an opposition later than November 29, 2012 because a later date would not
8 allow the court sufficient time to prepare for the hearing after receiving the reply brief. *See* briefing
9 schedule in Civil L.R. 7-2(a), 7-3(a), and 7-3(c) (If FBCC's motion were filed the minimum 35 days
10 before hearing, the opposition would have been due on November 29, 2012). Because the court is
11 continuing the hearing date, however, the stipulation is GRANTED and Specialized Transportation
12 may file its opposition by December 3, 2012.

13 **IT IS SO ORDERED.**

14 Dated: November 28, 2012



15 LAUREL BEELER
16 United States Magistrate Judge
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